



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
GREEN PLAINS HOPEWELL LLC
FOR
GREEN PLAINS HOPEWELL FACILITY
VPDES Permit No. VA0092525**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Green Plains Hopewell LLC, regarding the Green Plains Hopewell Facility, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "DMR" means Discharge Monitoring Report.
8. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
9. "Facility" means the Green Plains Hopewell Wastewater Treatment system located at 701 South 6th Avenue, Hopewell, Virginia, which treats and discharges non-contact cooling water and storm-water for the Green Plains Facility.
10. "Green Plains" means Green Plains Hopewell LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Green Plains is a "person" within the meaning of Va. Code § 62.1-44.3.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "O&M" means operations and maintenance.
13. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
14. "Permit" means VPDES Permit No. VA0092525, which was issued under the State Water Control Law and the Regulation to Green Plains on March 1, 2016, and which expires on February 28, 2021.
15. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand,

cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9
VAC 25-31-10.

16. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
17. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
18. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
20. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
21. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "VPDES" means Virginia Pollutant Discharge Elimination System.
24. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Green Plains owns and operates the Facility in Hopewell, Virginia. The Permit allows Green Plains to discharge industrial cooling tower water and stormwater from the

Facility, to an unnamed tributary of Cattail Creek, in strict compliance with the terms and conditions of the Permit.

2. The unnamed tributary of Cattail Creek is located in the Lower James River Basin. During the 2014 305(b)/303(d) Water Quality Assessment Integrated Report, the tributary was considered Fully Supporting with Observed Effects for the Fish Consumption Use due to a VDH fish consumption advisory for kepone. The remaining designated uses were not assessed; therefore, the creek was considered a Category 2B waterbody.
3. Green Plains Hopewell was addressed in the Chesapeake Bay TMDL, which was approved by the EPA on December 29, 2010. The TMDL addresses dissolved oxygen and submerged aquatic vegetation impairments in the Chesapeake Bay and its tidal tributaries by allocating total nitrogen, total phosphorus, and total suspended solids to point and nonpoint sources, as well as atmospheric deposition and natural sources, throughout the Bay watershed. The Facility was included in the aggregated loads for non-significant wastewater dischargers in the lower tidal freshwater James River estuary. Due to its ephemeral nature, the tributary should be considered a Tier 1 water.
4. Green Plains reported permit limit exceedances on its DMRs for temperature in the May 2016 through October 2016 monitoring periods, chlorine in May 2016, and copper in July and September of 2016.
5. On December 8, 2016, the Department issued NOV No. 2016-12-P-0001 to Green Plains for the permit violations reported on the DMRs for the May 2016 through October 2016 effluent violations.
6. On December 14, 2016, the Department met with Green Plains to discuss the NOV. Green Plains indicated that they wanted to eliminate the cooling tower discharge by moving to a 100% recycle system.
7. Green Plains reported permit limit exceedances on its DMRs for temperature in November and December of 2016, and January, May, and June of 2017; zinc in January 2017; and copper in December 2016, and January, May, and June of 2017.
8. On August 10, 2017, the Department issued NOV No. W2017-08-P-0001 to Green Plains for effluent violations reported on the DMRs for the November 2016 through June 2017 monitoring periods.
9. Green Plains reported permit limit exceedances on its DMRs for temperature in July and August of 2017, chlorine in September 2017, and copper in September 2017.
10. Green Plains' operating logs indicate that it discharged treated wastewater from the Plant every day from May 1, 2016 through September 30, 2017.

11. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
12. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
13. Parts I.A.1 and I.A.3 of the Permit authorize discharges from outfalls 001 and 101 respectively provided the discharges are monitored and limited as specified.
14. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
15. The Department has issued no permits or certificates to Green Plains other than VPDES Permit No. VA0092525.
16. The unnamed tributary of Cattail Creek is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
17. Based on the results of May 2016 through July 2017 DMRs submitted by Green Plains and the December 14, 2016 meeting, the Board concludes that Green Plains has violated Parts I.A.1 & I.A.3 of the Permit, Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging treated sewage and municipal wastes from the Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(4) and (7), above.
18. In December 2017, Green Plains submitted a plan to the Department outlining the scope of work to be conducted at the Facility which is incorporated as Appendix A of this Order. Green Plains have agreed to replace the cooling tower blowdown with a 100% recycle system which will remove the cooling tower water discharge to the stormwater pond and allow the Facility to meet Permit effluent limitations.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Green Plains, and Green Plains agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$7,875 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Green Plains shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Green Plains shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Green Plains for good cause shown by Green Plains, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Green Plains admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Green Plains consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Green Plains declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Green Plains to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Green Plains shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Green Plains shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Green Plains shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.


9. This Order is binding on the parties hereto, and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Green Plains. Nevertheless, Green Plains agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after Green Plains has completed all of the requirements of the Order;
- b. Green Plains petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Green Plains.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Green Plains from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Green Plains and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Green Plains certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind Green Plains to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Green Plains.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Green Plains voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 20th day of August, 2018.



Kyle Ivar Winter, P.E.
Department of Environmental Quality
Piedmont Deputy Regional Director

Green Plains Hopewell LLC voluntarily agrees to the issuance of this Order.

Date: 4/5/2018 By: Jeff Briggs, COO
(Person) (Title)
Green Plains Hopewell LLC

State of Nebraska
~~Commonwealth of Virginia~~

~~City~~ County of Douglas

The foregoing document was signed and acknowledged before me this 5th day of

April, 2018, by Jeff Briggs who is

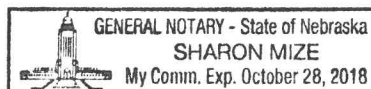
COO of Green Plains Hopewell LLC, on behalf of the company.

Sharon Mize
Notary Public

Registration No.

My commission expires: 10/28/18

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. Green Plains shall either transfer or terminate its individual VPDES Permit on April 10, 2018, or modify the Facility and/or its operations to meet all VPDES permit effluent limitations in accordance with the following schedule.
 - a. On or before May 1, 2018, Green Plains shall submit to the Department for review and approval, a preliminary engineering report and plans and specifications for Facility changes required to eliminate the discharge of cooling tower blowdown wastewater.
 - b. On or before July 20, 2018, Green Plains shall begin construction of the Department approved plan.
 - c. On or before September 1, 2018, Green Plains shall complete construction of the approved plan.
 - d. By October 1, 2018, Green Plains shall be in full compliance with State Water Control Law and Regulations.
2. DEQ Contact

Unless otherwise specified in this Order, Green Plains shall submit all requirements of Appendix A of this Order to:

Frank Lupini
Enforcement Specialist
VA DEQ
P.O. Box 1105,
Richmond, Virginia 23218
Frank.Lupini@deq.virginia.gov